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The Commonwealth of Massachusetts

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✓ Designer Selection Board

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✓ TO: EXECUTIVE DIRECTOR
✓ Cities and Towns

FROM: *OP* Frank P. Orlando, AIA
Executive Director
Designer Selection Board

✓ SUBJECT: ✓ Designer Selection Guidelines for a City or Town Building Project

DATE: October 1, 1994

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It is the intention of this memorandum to briefly explain the relationship between local authorities and the State Designer Selection Board and to provide local authorities with answers to a number of common and recurring questions regarding the proper application of designer selection statutes and procedures to the planning and design of local building projects.

Local authorities should be thoroughly familiar with the following provisions of Chapter 7, Section 38K (a) of the General Laws:

"Every contract for design services for any building construction, reconstruction, alteration, remodeling, or repair estimated to exceed one hundred thousand dollars (\$100,000) by any city, town or agency, board, commission, authority or instrumentality thereof, other than housing authorities shall be awarded only after a selection procedure adopted in writing, prior to publication requesting applications, complying with the purposes and intent of sections thirty-eight A 1/2 to thirty-eight O, inclusive, and the following requirements:"

The remainder of Section 38K (a) explains the specific minimum procedural requirements that must be satisfied to properly obtain proposals from designers. The State Designer Selection Board is responsible for publishing guidelines to assist public agencies not within the Board's direct jurisdiction (cities and towns) in the establishment of a professional and independent designer selection procedure consistent with the provisions and intent of the State designer selection statutes.

To carry out this advisory role, the State Designer Selection Board has issued the enclosed guidelines, that are revised as necessary, to all cities and towns. This issue updates the most recent issue (Feb. 24, 1992).

If you have any questions, please contact this office.

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15% of the total fee for the approval of schematics;
30% of the total fee for approval of design development documents;
70% of the total fee for the approval of construction documents, and;
100% of the total fee upon final acceptance of the project.
The last 25% of the fee is distributed proportionately throughout the construction phase.

The establishment of the total lump sum fee for design services depends on the magnitude and extent of difficulty of the project to be constructed. The DCPO has adopted (April 1993) a schedule of fees based upon percentage rates which, while they can no longer be used for public construction projects, are a useful guide to arrive at a lump sum fee for a particular project type. See Table I, below:

Table I: Designers Base Fee as a Percentage of the Fixed Limit Construction Cost (FLCC) by building type for New Construction. (See note below for instructions on calculating rehabilitation fee base)

BUILDING TYPES

FLCC *	I	II	III	IV	V
up to \$99,999	13.5%	11.2%	9.5%	7.5%	10.1%
\$100,000 - 249,999	12.3%	10.3%	8.7%	7.0%	8.8%
\$250,000 - 499,999	11.4%	9.6%	8.0%	6.5%	7.2%
\$500,000 - 999,999	10.8%	9.0%	7.5%	6.1%	6.7%
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\$1,000,000 - 2,499,999	10.4%	8.7%	7.2%	5.8%	6.2%
\$2,500,000 - 4,999,999	9.0%	7.5%	6.1%	4.8%	5.7%
\$5,000,000 - 9,999,999	8.0%	6.7%	5.4%	4.2%	5.4%
\$10,000,000 - 24,999,999	7.3%	6.2%	5.2%	4.0%	5.1%
\$25,000,000 - 99,999,999	7.0%	6.0%	5.0%	4.0%	4.8%
\$100,000,000 or more	7.0%	6.0%	5.0%	4.0%	

* Note: The Fixed Limit Construction Cost (FLCC) is the Estimated Construction Cost (ECC) as established in the project study adjusted to the projected mid point of construction.

GROUP I Projects of above average complexity as for example: courthouses, town halls, college buildings with special facilities, extended care facilities, hospitals, laboratories, libraries, specialized portions of correction facilities, and mental institutions.

GROUP II Projects of average complexity as for example: School and college classroom facilities, repetitive elements of correctional and detention facilities, dining halls (institutional), police and fire stations, gymnasiums, laundries and cleaning facilities, office buildings (for single occupancy), park, playgrounds and recreational facilities.

GROUP III Projects of less than average complexity as for example: Armories, apartments, dormitories, exhibition halls, skating rinks, and service garages.

GROUP IV Utilitarian buildings as for example: Parking structures and repetitive garages, simple loft-type structures (without special equipment), and warehouse.

GROUP V Repairs/renovations of limited complexity involving primarily a single discipline (engineering or architecture). i.e. roofs, masonry repairs, window replacement, mechanical/electrical/plumbing work, etc.

continued by the awarding authority, on a fee basis, to a later stage of the design.

7. Can a building project be subdivided into its component parts with provisions for donated time and materials to be combined with a general contractor's bid and construction of other major components?

ANSWER: Although a public authority may accept donated time and materials, the administration and coordination of different building components, i.e., roofing, electrical, plumbing, heating, etc. should be coordinated by a professional architect or engineer possessing the experience and expertise of providing contract documents that are in conformance with the new Massachusetts State Building Code and also Mass. G.L. Chapter 149, Section 44A to 44H, Section 44M, and Chapter 30, Section 39M, commonly known as the "bidding statutes". Dividing projects into smaller components merely to avoid threshold limits that trigger enactment of competitive bidding statutes is prohibited by law. Awarding authorities should proceed cautiously whenever a proposal is made to divide responsibilities for design and construction of a project by individual construction of building components on building projects.

8. Can cities or town request applicants for building projects to submit a fee proposal?

ANSWER: While there are no express provisions in the designer statutes that prohibits cities and towns from receiving competitive fee proposals from designers proposing to perform services related to a building project, there is a specific procedure to follow when an awarding authority intends to negotiate a fee. An argument can be made that the receipt of competitive fee proposals, prior to evaluating applicants, is contrary to the statutory provisions governing both the criteria for selecting designers and the method for determining the appropriate amount of a design fee. The Ward Commission's Final Report concluded that the receipt of competitive fee proposals was not in the overall public interest. The Inspector General adopted the position that public agencies are prohibited from receiving competitive fee proposals from designers.

The statutes state that:

"all fees must be stated in designer's contracts and in any subsequent amendment thereto as a total dollar amount. Contracts may provide for equitable adjustments in the event of changes in scope of services."

The total dollar fee amount may be set by the awarding authority prior to the receipt of applications from interested designers, or it may be negotiated. Designers should be reviewed and ranked on the basis of qualifications, not on the basis of the fee proposals.

If the public agency determines that the fee is to be negotiated, the awarding authority must first establish a maximum fee which cannot be exceeded during negotiations. The awarding authority should then negotiate with the first ranked designer and if that negotiation fails then initiate negotiations with the second ranked designer and if again unsuccessful, proceed to the third ranked designer. The procedures as outlined in MGL Ch. 7 §38G(b) should be followed, which provides in part:

APPLICATION to DESIGNER SELECTION BOARD

PLEASE SUBMIT 12 COPIES OF THIS FORM (IT MAY BE REPRODUCED) WITH A MAXIMUM OF TWO 8½" x 11" SUPPLEMENTARY SHEETS.

6. RECENT PROJECTS BEST ILLUSTRATING CURRENT QUALIFICATIONS FOR THIS PROJECT:

*In accordance with "Immediate Services Authorized" as printed in DSB Public Notices, i.e., study (St.), schematics (Sch.), design development (D.D.), construction documents (C.D.), administration of construction (A.C.).

7a. ADDITIONAL INFORMATION OR DESCRIPTION OF RESOURCES SUPPORTING YOUR FIRM'S QUALIFICATIONS FOR THIS PROJECT: (If joint venture, indicate previous experience with this joint venture.)

7b. ESTIMATED TIME FOR YOUR FIRM TO PERFORM SCOPE OF SERVICES AS PUBLICLY ADVERTISED.

8. PRINCIPAL BUSINESS OF THIS FIRM AND PRINCIPAL SPECIALIZATIONS:

9 PROFESSIONAL LIABILITY INSURANCE

NAME OF COMPANY	AGGREGATE AMOUNT	POLICY NUMBER	EXPIRATION DATE
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As a condition of application, each applicant agrees to carry, if selected for the new project, professional liability insurance in an amount equal to 10% of the estimated construction cost of this project, in conformance with the provisions of Article 16 of the standard design contract, i.e., minimum coverage of \$50,000 and maximum coverage of \$1,000,000. N.B. Design Services for the preparation of studies, surveys, soil testing, cost estimates, or programs do not require professional liability insurance.

10. NAMES AND TITLES OF ALL PARTNERS OR DIRECTORS	% STOCK	MASS. REG. NO.	DISCIPLINE

11. ALL WORK, BY FIRM (or Joint Venture), CURRENTLY BEING PERFORMED DIRECTLY FOR MASS. AGENCIES:

*In accordance with "Immediate Services Authorized" as printed in DSB Public Notices, i.e., study (St.), schematics (Sch.), design development (D.D.), construction documents (C.D.), administration of construction (A.C.).

12. I hereby certify that this firm is a "Designer", as that term is defined in Chapter 7, Section 38A½ of the General Laws, unless the design services required are limited to the preparation of studies, surveys, soil testing, cost estimates or programs. The foregoing is a statement of facts, sworn to by the undersigned under the penalties for perjury.

SIGNATURE

PRINTED NAME AND TITLE

DATE

Current or updated Master File Brochures shall be on file with the Board. Applicants agree to execute the standard contract for Designers Services. DCPC Form C-2, Revised 6/85.

IF ADDITIONAL SPACE IS NECESSARY, PLEASE ATTACH NO MORE THAN 2 ADDITIONAL 8½ x 11 SHEETS.